

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

GILBERT S. DAMIAN, #382329

v.

NATHANIEL QUARTERMAN,
DIRECTOR OF TDCJ-CID

§
§
§
§
§
§
§

CIVIL ACTION NO. G-05-282

ORDER


Before the Court is the Report and Recommendation of the United States Magistrate Judge that was entered on November 7, 2006. Petitioner filed objections in a timely manner.

In his Objections Petitioner essentially appears to contend that this Petition should not be considered successive because in his prior federal habeas petition he felt constrained to limit the issues presented. In particular, Petitioner claims that he felt that “he was under **strict court order** [from United States District Court Judge Hittner] to follow instructions” and limit his prior federal habeas petition to time calculation errors only. [Emphasis original]. Pet’r Obj. at 2. Petitioner also claims that he was not then aware that he would have to seek federal habeas relief with regard to his illegal arrest and conviction because he had an action pending on these issues that he had brought under 42 U.S.C. § 1983. Pet’r Obj. at 3. Petitioner’s Objections are without merit. Moreover, Petitioner shows no error in the Report and Recommendations.

Having given this matter *de novo* review under 28 U.S.C. § 636(b)(1)(C), this Court finds that the Report and Recommendation is correct and it is, therefore, **ACCEPTED** by this Court in its entirety and incorporated by reference herein.

Accordingly, it is **ORDERED** that the Respondent's Motion to Dismiss For Lack of Jurisdiction and Alternative Motion For Summary Judgment (Instrument No. 31) is **GRANTED**; and the Petition for a Writ of Habeas Corpus of Gilbert S. Damian (Instrument Nos. 1 and 26) is **DISMISSED WITHOUT PREJUDICE** as a successive petition.

DONE at Galveston, Texas this 27th day of November, 2006.



Samuel B. Kent
United States District Judge